



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003



IN REPLY REFER TO:
08EVEN00-2013-CPA-0169

August 23, 2013

Mr. Brian Pedrotti, Project Manager
County of San Luis Obispo
Department of Planning and Building
County Government Center, Room 200
San Luis Obispo, California 93408

Subject: Recirculated Revised Draft Environmental Impact Report for the Laetitia Agriculture Cluster Subdivision Tract 2606

Dear Mr. Pedrotti:

This letter provides the U.S. Fish and Wildlife Service's (Service) comments on the above-referenced recirculated revised draft environmental impact report (rrDEIR) that addresses revisions to water resources, biological resources, and alternatives sections of the previous draft environmental impact report circulated for public review in 2012. It is our understanding from the notice at the beginning of the Biological Resources section that the County will not consider our previous comments from 2008 and 2012 but that we are required submit a new comment letter in order to ensure your consideration.

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take can be obtained in two ways. If a project is to be funded, authorized, or carried out by a Federal agency, and may affect a listed species, the Federal agency must consult with the Service pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act.

As it is not our primary responsibility to comment on documents prepared pursuant to the California Environmental Quality Act, our comments on the rrDEIR do not constitute a full review of project impacts. We are providing our comments based upon a review of the revised biological resources, project activities that have potential to affect federally listed species, and our concerns for listed species within our jurisdiction related to our mandates under the Act. Please note that much of the information contained in this letter reiterates those comments provided in our December 1, 2008, and June 11, 2012 comment letters. Based upon our review, we continue to have a number of concerns regarding how presence of, and impacts to, federally listed species have been characterized in this document.

According to the Biological Resources section of the rrDEIR, those federally listed species identified, or with the potential to occur, on-site include the California red-legged frog (*Rana draytonii*) and south-central California coast steelhead (*Oncorhynchus mykiss irideus*). The section also discusses designated critical habitat for both species, stating Los Berros Creek at the southern boundary of the project site supports suitable habitat and the primary constituent elements for steelhead but that is not located within any of the San Luis Obispo County California red-legged frog critical habitat units. Steelhead fall under the authority of NOAA Fisheries and, as such, is not be further addressed herein. Our comments on the presence of federally listed species and other Federal resources under our jurisdictions as they relate to the proposed project are provided below.

California Red-Legged Frog

Surveys for the California red-legged frog were conducted in October and November of 2000, making information for this species 13 years old. We do not consider these data suitable for use in the characterization of the extent of current site occupation and use by the species. While the document provides numerous mitigation measures for California red-legged frog, these measures do not appear to have changed substantially since 2008. The very general nature of the impact discussion makes it impossible to determine if take of California red-legged frogs can be avoided or minimized. The Service does not consider pre-construction surveys to constitute mitigation, as typically there is no indication of what action would be taken should species be identified at this stage. If implementation of a restoration plan for riparian habitat is to be included as a mitigation measure (see BIO-mms 6 and 8), plan development should include coordination with the Service. The County concludes that BIO-mm 19 would reduce significant impacts to California red-legged frog to a level that is less than significant (i.e., Class II); however, takes no responsibility for the implementation of this measure. Rather, the County defers responsibility to the Service as part of the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act or exemption pursuant to section 7(a)(2) of the Act. Additionally, BIO-mm 19-e seems to allow biologists to move the species out of harm's way as part of pre-construction monitoring. It should be noted that this activity cannot be conducted absent exemption afforded by section 7 or authorized by an incidental take permit issued pursuant to section 10(a)(1)(B). BIO-mm-20 states that the timing would be "prior to approval of subdivision public improvements or grading permit issuance." This effectively means that mitigation would be deferred until such time as one of these actions occur and puts the responsibility on the Service absent any real involvement

in project prior to its approval by the County of San Luis Obispo. For the Service to receive an already permitted project often forecloses on options that we must consider and evaluate in order to meet permit issuance criteria or demonstrate that impacts to the species are avoided or minimized to the maximum extent practicable.

California red-legged frogs travel well in excess of 100 feet from breeding habitat. Researchers in Santa Cruz County documented California red-legged frogs making overland movements of up to 2 miles over the course of a wet season. Individual frogs were observed to make long-distance movements that were straight-line, point-to-point migrations over variable upland terrain rather than using riparian corridors for movement between habitats. For this reason, we again recommend the County conduct current, protocol-level surveys for California red-legged frog wherever suitable habitat is present throughout the project area. Surveys should not be restricted to proposed development areas because, as a mobile species that uses both wetland and upland habitats, there is the possibility that the species could show up in development areas adjacent to areas where development has not been proposed but frogs could occur.

Pismo Clarkia (*Clarkia speciosa* ssp. *immaculata*)

The Biological Resources section of the rrDEIR it still states:

“David Wolff Environmental conducted focused Pismo Clarkia surveys on June 1, 2, and 4, 2004. Mr. Wolff surveyed areas not previously disturbed by agricultural practices and proposed for development. Rincon Environmental Consultants conducted botanical surveys on the northwest portion of the property on December 20, 21, and 22, 2000; and, January 19, April 4, and June 8, 2001. The Rincon surveys covered the approximate locations of proposed Lots 46 through 85 and the associated roads; however, the survey did not cover the eastern portion of the property. The surveys conducted by Morro Group, Mr. Wolff, and Rincon were timed to coincide with the appropriate blooming periods of special-status plant species that have suitable habitat within the proposed project site and were sufficient to establish the presence/absence of special-status plant species.”

The text in this paragraph seems to focus on all sensitive plant species rather than speak specifically to the potential for Pismo clarkia to occur onsite.

Table V.E.1 states that “Soils are not suitable” for Pismo clarkia.” Our current knowledge about Pismo clarkia is extremely limited; however, we do know that Pismo clarkia typically occurs in native and non-native grasslands and openings associated with chaparral and oak woodland habitats, often, but not exclusively, on sandy substrates. It should be noted that the soils and vegetation in those areas where occurrences are found have been mapped at a fairly gross/broad scale that does not capture inclusions of less than the minimum mapping unit. Pismo clarkia may occur in these inclusion areas. By way of example, a population of Pismo clarkia north of Grover City occurs on Santa Lucia shaly clay loam soils in the ecotone between coast live oak woodland and valley grassland. The Santa Lucia shaly clay loam series occurs within the project

area as indicated in the Geology and Soils section of the previous DEIR. We also know that Pismo clarkia is an annual herbaceous species that does not always express itself in the same location(s) in consecutive years. This suggests that there may be seed dormancy and seed bank issues that should be addressed in the impact analysis.

The entire project area was not subject to survey. Surveys for the purposes of an environmental analysis should not be restricted to those areas proposed for development. Many surveys conducted for Pismo clarkia were not conducive to its detection as the dates upon which they were performed were too early in the season. It is also unknown if a reference population was checked to ensure that the timing of any surveys would be sufficient to verify negative findings. The referenced report by Mr. Wolf (*Focused Pismo Clarkia Survey Letter of Findings*; David Wolff Environmental, June 17, 2004) should be included in Appendix D to allow for its review. Table V.E.1 of Biological Resources section states that the nearest population of Pismo clarkia is located "1.68 miles south of the project site north of Black Lake Golf Course" but our review of the 2013 California Natural Database shows that this population was not found during surveys conducted for the species at this location in 2006.

Based upon the level of information provided for Pismo clarkia, we cannot agree that the limited and dated surveys conducted are sufficient to establish its absence within the project site. We recommend that the County base their impact analysis on current surveys for this species. The surveys should be done by a qualified botanist with experience with the species and during the proper time of year. We also recommend that species expression for the given year be cross-referenced with known populations.

Gambel's watercress (*Nasturtium gambelii*) and marsh sandwort (*Arenaria paludicola*)

As noted in our 2008 letter, the Service considers the Black Lake populations of Gambel's watercress extirpated. It is likely that the population of marsh sandwort from this area is also extirpated. The only natural population of Gambel's watercress is at Vandenberg Air Force Base (Santa Barbara County); marsh sandwort is known to occur in the wild only from Oso Flaco Lake and as introduced populations in Sweet Springs Marsh and Guadalupe Dunes National Wildlife Refuge (San Luis Obispo County), Wilder Ranch (Santa Cruz County), and Golden Gate National Recreation Area (Marin County). Additional populations could exist elsewhere on unsurveyed lands.

The "Sensitive Species Descriptions" section (Appendix D2) still states that potential habitat for marsh sandwort is present in the wet portions of the various drainages and within sandy openings of Los Berros Creek and the project would require installation of road crossings in several drainages that could support marsh sandwort. While marsh sandwort was not observed during the botanical surveys, they "were conducted towards the end of the species normal blooming period." There is no discussion of Gambel's watercress in this appendix; however, in Table V.E.1 of Biological Resources section it states "Site elevation is too high. Species not observed during surveys." Aside from this brief information, no other information regarding the actual survey dates or time expended searching for these species is included in the Biological Resources

section or Appendix D of the rrDEIR. We consider Gambel's watercress and marsh sandwort to be critically endangered species. Their detection can be difficult and, as such, it is important that surveying botanists have experience with these plants and that surveys are conducted at the proper time of year to maximize detection. Once suitable habitat is established, focused surveys for these species should be conducted. Please note that elevations provided for plant species are typically of a general nature and should not be used to dismiss the likelihood of occurrence if suitable habitat is present otherwise.

Based upon the information provided, we do not agree that surveys conducted for Gambel's watercress and marsh sandwort are sufficient to establish species absence within the project site and, again, recommend the County conduct current-year surveys.

Migratory Birds

For both the Agricultural Residential Cluster Subdivision and Future Development Program, the Service is concerned about potential impacts to migratory birds in the proposed project area. We have conservation responsibilities and management authority for migratory birds under the Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). Any land clearing or other surface disturbance associated with proposed actions should be timed to avoid potential destruction of bird nests or young of birds that breed in the area, as such destruction may be in violation of the MBTA. Under the MBTA, nests with eggs or young of migratory birds may not be damaged, nor may migratory birds be killed. If this seasonal restriction is not possible, we recommend that a qualified biologist survey the area for nests or evidence of nesting (e.g., mated pairs, territorial defense, carrying of nesting material, transporting food) prior to the commencement of land clearing activities. If nests or other evidence of nesting are observed, a protective buffer should be delineated and the entire area avoided to prevent destruction or disturbance to nests until they are no longer active.

Coast Live Oak Woodland

Impacts to coast live oak woodland and coast live oaks are considered "significant, adverse, unavoidable." It is difficult to comprehend how it is not possible to achieve desired project objectives without having to disturb up to 169 coast live oaks (of which 55, or 33 percent, would be removed) and modifying over 14 acres of coast live oak woodland such that its ability to function as wildlife habitat would be substantially diminished.

While coast live oak woodland is not a resource typically regulated by the Service, the loss of approximately 55 coast live oaks (*Quercus agrifolia*) and disturbance of over 14 acres of coast live oak woodland habitat bears notice by our agency. Coast live oak woodlands provide habitat for a diversity of species, notably raptors. A proposed mitigation measure intended to compensate for up to 50 percent of the oak impacts involves recordation of a conservation easement to protect 2,000 square feet of oak woodland habitat for each tree removed in perpetuity. Furthermore, "If the applicant is not able to establish a conservation easement, the applicant shall provide funding to the California Wildlife Conservation Board to be used for the

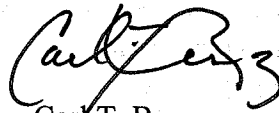
purchase of Oak Woodland Conservation Easements. The final funding amount shall include \$970.00 for each tree removed." For the first scenario, the area of projected impact is 14.35 acres. To account for half of that, 7.2 acres would be needed. Protecting 2000 square feet for half of the oaks lost (150) would require an area of approximately 6.9 acres. This represents a ration of less than a 1:1. Additionally, if the second scenario is selected, it is difficult to imagine that \$145,500 could effectively purchase and manage over 7 acres of coast live oak woodland habitat in perpetuity.

We encourage the applicant and County of San Luis Obispo to explore a project design that could meet desired project objectives but also avoid coast live oak woodland and its namesake trees. At a minimum, we would recommend minimizing the effects to a greater extent than currently proposed.

In summary, we again find the 2013 rrDEIR to be lacking in specificity of information regarding the presence of federally listed species needed to accurately characterize project impacts, as proposed, on resources of Federal concern. It does not appear that our comments provided in our June 11, 2012, letter were considered by the County. It remains our opinion that current information on California red-legged frog, Pismo clarkia, Gambel's watercress, and marsh sandwort is still needed to allow for a careful assessment of the impacts that are likely to result from the proposed project and all of the alternatives considered. We believe that such an assessment would better inform the County regarding identification of the environmentally preferred alternative. We would like to see impacts to federally listed species avoided whenever possible or minimized to the maximum extent practicable prior to the assignment of mitigation measures. We remain available to work with you to achieve this goal.

We appreciate the opportunity to provide comments on the Laetitia Agriculture Cluster Subdivision Tentative Tract Map and Conditional Use Permit rrDEIR. If you have any questions regarding our comments contained herein or the section 7(a)(2) and 10(a)(1)(B) processes, please contact Julie M. Vanderwier at (805) 644-1766, extension 222.

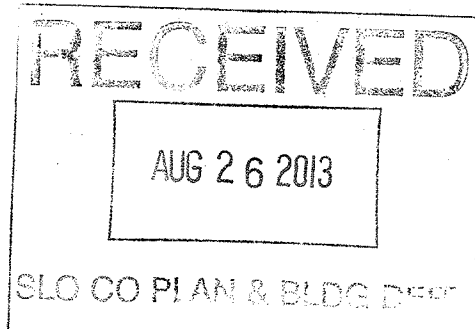
Sincerely,



Carl T. Benz
Acting Field Supervisor

cc:

Brandon Sanderson, California Department of Fish and Wildlife

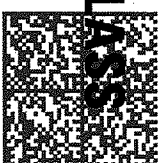


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